

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. **DOCKET FILE COPY ORIGINAL**
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Fax: 617/542-2241

Telephone: 202/434-7300
Fax: 202/434-7400
www.mintz.com

Gil M. Strobel

RECEIVED

SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Direct Dial Number
202/434-7375
Internet Address
gmstrobe@mintz.com

September 14, 1998

VIA HAND DELIVERY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M St. N.W., Room 222
Washington, D.C. 20554

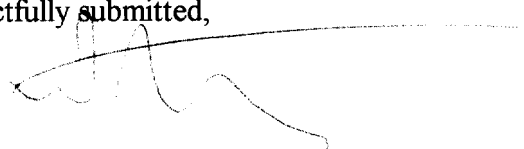
Re: Comments of Cablevision Systems Corp., CC Docket No. 98-146

Dear Ms. Salas:

On behalf of Cablevision Systems Corp. ("Cablevision"), enclosed for filing are an original and four copies of Cablevision's comments responding to the Commission's Notice of Inquiry in the above-referenced docket.

If you have any questions concerning this filing please contact the undersigned. Thank you for your assistance.

Respectfully submitted,



Gil M. Strobel

Enclosure

DCDOCS: 133925.1 (2vc501!.doc)

No. of Copies rec'd
List ABCDE

024

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a)
Reasonable and Timely Fashion, and)
Possible Steps to Accelerate Such)
Deployment Pursuant to Section 706 of)
the Telecommunications Act of 1996)

CC Docket No. 98-146

COMMENTS OF CABLEVISION SYSTEMS CORP.

David Ellen, Esq.
Cablevision Systems Corp.
One Media Crossways
Woodbury, New York 11797
(516) 393-4123

Howard J. Symons
Gil M. Strobel
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004-2608
(202) 434-7300

September 14, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a)	CC Docket No. 98-146
Reasonable and Timely Fashion, and)	
Possible Steps to Accelerate Such)	
Deployment Pursuant to Section 706 of)	
the Telecommunications Act of 1996)	

COMMENTS OF CABLEVISION SYSTEMS CORP.

Cablevision Systems Corp. ("Cablevision"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Inquiry initiated pursuant to section 706 of the Telecommunications Act of 1996.^{1/} Cablevision is one of the nation's leading telecommunications and entertainment companies, offering a wide range of basic and advanced services and products. These comments are intended to provide the Commission with critical real-world context as it fulfills its mandate under section 706 to encourage investment in the infrastructure necessary to bring "advanced telecommunications capability to all Americans."^{2/}

^{1/} Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Notice of Inquiry, FCC 98-187 (rel. August 7, 1998) ("Section 706 NOI").

^{2/} Section 706(a).

Specifically, focusing on Cablevision's high-speed Internet services, these comments highlight that Cablevision is actively making substantial, high-risk investments -- in infrastructure, as well as in content -- to roll out these advanced services to residential customers in its service areas. In light of these investments, the Commission should fulfill its mandate under section 706 by looking into ways to remove whatever regulatory obstacles it can that impede continued broadband infrastructure investment. The last thing the Commission should be considering -- as a matter of law and policy -- is the imposition on cable companies of new regulatory obligations that would create enormous disincentives for such investment.

I. CABLEVISION'S INVESTMENT IN HIGH-SPEED INTERNET SERVICES

Cablevision has already spent hundreds of millions of dollars in recent years to aggressively upgrade and rebuild its broadband cable plant to bring a new generation of video services to its customers. Such upgrades and rebuilding also help enable Cablevision to roll out an array of new basic and advanced telecommunications services and capabilities to residential customers. Rolling out these services requires substantial investment in service-specific infrastructure, over and above the expenditures on general upgrading and rebuilding.

The array of services that Cablevision is already providing, or plans to provide in the future, includes local and long distance telephone services, high-speed Internet services, and video on demand. For example, in 1997, Cablevision launched Optimum Online, a high-speed Internet service that links PC users to Cablevision's online content and to the World Wide Web via cable modems and the cable broadband platform. Using this advanced infrastructure, Optimum OnLine users can connect to the Internet at speeds up to 100 times faster than conventional telephone modems, without tying up telephone lines or interfering with television programming. More

recently, Cablevision launched another service known as Optimum @Home, which takes advantage of @Home's advanced Internet backbone network.

Cablevision has also placed a special emphasis on developing local online content for its Internet service subscribers. Through its New Media Group and the Optimum OnLine Content staff, and drawing on its traditional internally developed local programming (e.g., News 12), Cablevision has been developing and maintaining for its Internet service subscribers a broad array of online local news, sports, traffic, and weather, which are updated continually. Cablevision has also been developing and maintaining, EZ Seek, a comprehensive guide to local events, activities, and businesses. Education has been a priority as well, with Cablevision delivering a variety of education-related offerings under the "Our Schools" banner. It is not surprising, then, that the FCC's Office of Plans and Policy ("OPP"), in its recent "white paper" on cable-delivered Internet services, expressly recognized Cablevision's emphasis on "significant operator-provided content."^{3/}

Cablevision's emphasis on local content stems from its firm belief that the high-speed capability of its services alone will not be enough to generate broad appeal -- especially in a world where incumbent Internet service providers already have an enormous, entrenched customer base^{4/} and where other competitors, such as telephone companies, are actively investing in their own high-speed platforms. The wisdom of Cablevision's emphasis on content also finds strong

^{3/} B. Esbin, INTERNET OVER CABLE: DEFINING THE FUTURE IN TERMS OF THE PAST, FCC Office of Plans and Policy Working Paper Series, No. 30 (August 1998), at 79. ("Internet over Cable").

^{4/} America Online ("AOL") alone has over 12 million subscribers, compared to the several thousand Cablevision has signed up so far. See Beth Berselli, Charges Muddy Big Quarter for AOL, Washington Post, August 5, 1998, at D-9. In addition, according to the OPP, the "Big Four" online service companies -- AOL, CompuServe (CompuServe was later acquired by AOL), Microsoft Corp., and Prodigy, Inc. -- had a combined 84% share of the market. Internet over Cable at 18-19.

support in the history of cable television. Originally, cable television was regarded as little more than a transmission pipe for delivering existing television station signals in areas where broadcast reception was poor. It was not long, however, before the cable industry recognized that clearer pictures alone would not be enough for its service to create broad consumer appeal, especially in areas where broadcast reception was good. The industry realized that it would have to invest heavily in developing original programming content to sell its product. It is in light of this very real historical experience that companies like Cablevision regard themselves more as content companies that provide integrated service offerings than as transmission companies.

Thus, in addition to its other investments in general cable plant upgrades and rebuilds, Cablevision has invested -- and currently plans to continue investing -- tens of millions dollars in Internet-specific infrastructure and equipment (e.g., servers, cable modems, etc.) and the development of online content. These Internet-related investments are hardly risk-free. To attract customers, for instance, Cablevision will have to overcome the advantages the incumbents enjoy in terms of Internet brand name and an enormous entrenched consumer base. This is not to suggest that Cablevision is anything but optimistic about the future of its high-speed Internet services. It is merely a realistic statement of the substantial financial risks Cablevision and other cable companies are undertaking as they roll out advanced services to residential customers.

II. THE COMMISSION'S SECTION 706 POLICY

Section 706 requires the Commission to determine "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."^{5/} If advanced capability is being deployed in a reasonable and timely fashion, then Section 706 requires the Commission to take no action. The Commission is directed to take action only if it determines that advanced telecommunications capability is not being deployed in a timely manner. In that situation, the Commission is instructed to "accelerate deployment . . . by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."^{6/}

Cablevision is optimistic that its sustained efforts -- along with the efforts of other cable companies, phone companies, and other entities -- will lead to the deployment of these services, including high-speed Internet services, in a reasonable and timely fashion. Thus, in Cablevision's view, no Commission action is warranted.

Even if the Commission concludes that action is warranted, the only actions the Commission should consider -- as a matter of law and policy -- are those that, in the words of section 706, are designed to "remov[e] barriers to infrastructure investment" or "promot[e] competition in the telecommunications market."^{7/} In this regard, Congress plainly recognized that the deployment of advanced telecommunications capability to all Americans critically depends on having the "infrastructure" to deliver it. To this end, the Commission should consider any action, that would further induce cable companies to invest in such infrastructure. For example, the

^{5/} Section 706(b).

^{6/} Section 706(b).

^{7/} Section 706(b).

Commission could adopt a general policy that it will not stretch the interpretation of ambiguous regulatory requirements to apply them to cable-delivered Internet services.

The last thing the Commission should consider in fulfilling its section 706 mandate is the imposing new regulatory burdens on cable companies that would inhibit infrastructure investment and thereby delay the roll out of advanced telecommunications services and capabilities. Indeed, in light of the significant financial risks that cable companies are undertaking to roll out these services (as the case with high-speed Internet services indicates), substantial new regulatory burdens could dramatically inhibit investment and slow the deployment of these services. Such a result is not only contrary to sound public policy, but also to the plain language of section 706 and its stated purpose of encouraging investment in advanced services capabilities. In this regard, there is also a strong legal argument that the consideration of any such new regulatory burden is jurisdictionally out of bounds in a section 706 proceeding burden, precisely because it would create disincentives to advanced infrastructure investment.

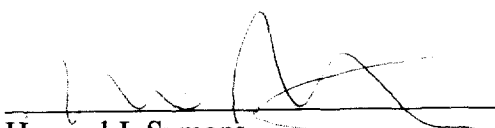
CONCLUSION

For all the reasons explained above, Cablevision requests that the Commission determine that advanced telecommunications capability is being deployed in a reasonable and timely fashion, and that in no event are substantial new regulatory burdens on cable companies justified in light of the text and purposes of section 706 and in light of sound public policy.

Respectfully submitted,

CABLEVISION SYSTEMS CORP.

David Ellen, Esq.
Cablevision Systems Corp.
One Media Crossways
Woodbury, New York 11797
(516) 393-4123



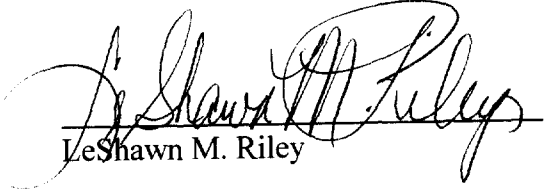
Howard J. Symons
Gil M. Strobel
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004-2608
(202) 434-7300

September 14, 1998

DCDOCS: 134326.1 (2vn@01!.doc)

CERTIFICATE OF SERVICE

I, LeShawn M. Riley, hereby certify that on this 14th day of September, 1998, I caused copies of the foregoing "Comments of Cablevision Systems Corp." to be delivered by hand to the following:



LeShawn M. Riley

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

John T. Nakahata
Chief of Staff
Office of Chairman Kennard
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Thomas C. Power
Legal Advisor
Office of Chairman William Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

James Casserly
Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Jane Mago
Senior Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Anita Wallgren
Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Kyle D. Dixon
Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Rick Chessen
Senior Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
1919 N Street, N.W.
Room 826
Washington, D.C. 20554

Helgi Walker
Legal Advisor
Office of Commissioner Harold
Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Paul Gallant
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
1919 N Street, N.W.
Room 826
Washington, D.C. 20554

Kevin Martin
Legal Advisor
Office of Commissioner Harold
Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Robert M. Pepper
Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W.
Room 822
Washington, D.C. 20554

Dale N. Hatfield
Chief
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Room 230
Washington, D.C. 20554

Stagg Newman
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W.
Room 822
Washington, D.C. 20554

Kathryn C. Brown
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

John W. Berresford
Senior Antitrust Attorney, Industry Analysis
Division
Common Carrier Bureau
2033 M Street, N.W.
Room 502C
Washington, D.C. 20554

Deborah Lathen
Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 900
Washington, D.C. 20554

Barbara Esbin
Associate Bureau Chief
Cable Service Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 900
Washington, D.C. 20554

International Transcription Service
Federal Communications Commission
1919 M Street, N.W.
Room 246
Washington, D.C. 20037